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and Portland Hair Extensions by Penelope

UNITED STATES DISTRICT COURT

DISTRICT OF OREGON

PORTLAND DIVISION

KIMBERLY SCHOENE, AN OREGON  
RESIDENT,

Case No. 3:23-cv-00693-AN

Plaintiff,

v.

**DEFENDANT PENELOPE  
CHRISTENSEN AND PORTLAND  
HAIR EXTENSIONS BY PENELOPE'S  
ANSWER AND AFFIRMATIVE  
DEFENSES**

PENELOPE CHRISTENSEN, AN  
OREGON RESIDENT; AND PORTLAND  
HAIR EXTENSIONS BY  
PENELOPE, AN ACTIVE OREGON  
CORPORATION,

**DEMAND FOR JURY TRIAL**

Defendants.

In answer to Plaintiff's Complaint, Defendants Penelope Christensen and Portland Hair  
Extensions by Penelope (hereafter referred to as "Defendants"), by and through their attorneys of

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**DEFENDANTS' PENELOPE CHRISTENSEN AND PORTLAND HAIR  
EXTENSIONS BY PENELOPE'S ANSWER AND AFFIRMATIVE  
DEFENSES**

record, hereby admit, deny and allege as follows. Defendants deny each and every allegation contained in Plaintiff's Complaint except as expressly admitted herein.

### **INTRODUCTION**

1. Defendants deny paragraphs 1, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29 and 30.
2. In response to the allegations in paragraph 2 of the introduction, Defendants admit that there was a declaration of Schoene, but deny the facts stated therein.
3. In response to the allegations in paragraph 14, Defendants admit that Ms. Christensen opened her own salon, but deny the remainder of the paragraph.
4. In response to the allegations in paragraph 15, Defendants admit that the parties have a history of a working relationship but deny the remainder of the paragraph.
5. In response to the allegations in paragraph 16, Defendants admit that Ms. Christensen has a business called "Portland Hair Extensions by Penelope," but deny the remainder of the paragraph.

### **PARTIES**

6. Defendants admit paragraphs 31, 32, 33, 34, 35, 36, 37 and 38.

### **JURISDICTION AND VENUE**

7. Defendants deny paragraphs 39, 40 and 41.

### **PLAINTIFF'S DEMAND LETTER TO DEFENDANTS**

8. Defendants deny paragraphs 42 and 43.

**FACTS COMMON TO ALL CLAIMS FOR RELIEF**

9. Defendants deny paragraphs 44, 45, 46, 50, 51, 54, 55, 56, 57, 61, 62, 63, 66, 67, 68, 69, 70, 71, 72 and subparts (a) – (h), 73, 74, 75, 76, 77, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 93, 101, 104, 105, 107, 109, 110 and subparagraphs (a) – (d), 111, 112, 113, 114, 117 and subparagraphs (a) – (c), 118, 123, 124, 125 and all subparts (1-20), 126 and all subparts (a) – (e), 127 and all subparts (1) – (9), 128 and all subparts (1) – (12), 129, 130 and all subparts (1)-(6), 131 and all subparts (a) – (b), 132 and all subparts (1) – (33), 133 and all subparts (a) – (f), 134, 135, 137, 141, 142, and 143.
10. Defendants are without sufficient information and belief to admit paragraphs 47, 48, 49, 52, 53, 58, 59, 60, 64, 65, 78, 79, 92, 93 and subparts (a) – (c), 94, 95, 96, 97, 98, 99, 100, 102, 103, 106 and subparagraphs (a) – (e), 108, 115, 116, 119, 120, 121, 138, and 139 and therefore each of these paragraphs are denied.
11. Paragraph 122 is not an allegation, but rather an introduction to various statements and therefore a response is not required. To the extent an answer is required, Defendants deny paragraph 122.
12. Paragraph 136 is vague, and Ms. Christensen admits that she knows Plaintiff, but the remainder is denied.

**DAMAGES**

13. Defendants deny paragraphs 144, 145, 146, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 163, 164, 165, 166, 167, 168, 169, 170, 172, 173, 174, 175, 176,

178, 179, 180, 181, 182, 184, 185, 186, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 213, 214, 215, 216, 217, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, 229, 230, 231, 232, 233 and all its subparts (a)-(g). 234, 235, 236, 237, 238, 239, 240 and 241.

14. Paragraphs 147, 162, 171, 177, 183, 187, 198, 212 and 218, are not new allegations, but realleged prior allegations. Defendants admit nor deny, as the repeated allegations have previously admitted or denied.

15. Paragraphs 147, 162, 171, 177, 183, 187, 198, 212 and 218, are not new allegations, but realleged prior allegations. Defendants admit nor deny, as the repeated allegations have previously admitted or denied.

16. Defendants are without sufficient information and belief to admit paragraph 200 and therefore each of these paragraphs is denied.

### **AFFIRMATIVE DEFENSES**

17. Having fully answered the allegations in Plaintiff's Complaint, Defendants assert the following affirmative defenses.

#### **FIRST AFFIRMATIVE DEFENSE**

##### **(Failure to State a Claim)**

18. The Complaint, one or more counts set forth therein, fails to state a claim upon which relief can be granted.

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**SECOND AFFIRMATIVE DEFENSE**

**(Fair Use)**

19. The claims made in the Complaint are barred, in whole or in part, by the doctrines of fair use, nominative fair use and/or descriptive use.

**THIRD AFFIRMATIVE DEFENSE**

**(Functionality)**

20. The claims made in the Complaint are barred, in whole or in part, on the basis that any marks at issue are functional.

**FOURTH AFFIRMATIVE DEFENSE**

**(Innocent Infringement)**

21. The claims made in the Complaint are barred, in whole or in part, because any infringement, was innocent.

**FIFTH AFFIRMATIVE DEFENSE**

**(Statutes of Limitations)**

22. The claims made in the Complaint are barred, in whole or in part, by applicable statutes of limitations.

**SIXTH AFFIRMATIVE DEFENSE**

**(Laches)**

23. The claims made in the Complaint are barred, in whole or in part, in that Plaintiff has unreasonably delayed efforts to enforce her rights, if any, despite her full awareness of

Defendants' actions.

**SEVENTH AFFIRMATIVE DEFENSE**

**(Generic Terms)**

24. The claims made in the Complaint are barred, in whole or in part, on the basis that some or all marks at issue are generic.

**EIGHTH AFFIRMATIVE DEFENSE**

**(Lack of Secondary Meaning)**

25. The claims made in the Complaint are barred, in whole or in part, on the basis that some or all marks at issue lack secondary meaning.

**NINTH AFFIRMATIVE DEFENSE**

**(Waiver, Acquiescence, and Estoppel)**

26. Each of the purported claims set forth in this Complaint is barred by the doctrines of waiver, acquiescence, and estoppel.

**TENTH AFFIRMATIVE DEFENSE**

**(Non-Infringement)**

27. Defendants have not infringed on any applicable trademarks under federal or state law.

**ELEVENTH AFFIRMATIVE DEFENSE**

**(No Causation)**

28. Plaintiff's claims against Defendants are barred because Plaintiff's damages, if any, were not caused by Defendants.

**TWELFTH AFFIRMATIVE DEFENSE**

**(No Damage)**

29. Without admitting that the Complaint states a claim, there has been no damage in any amount, manner or at all by reasons of any act alleged against Defendants in the Complaint, and the relief prayed for in the Complaint therefore cannot be granted.

**THIRTEENTH AFFIRMATIVE DEFENSE**

**(Unclean Hands)**

30. Plaintiff's claims are barred by the doctrine of unclean hands.

**FOURTEENTH AFFIRMATIVE DEFENSE**

**(Lack of Irreparable Harm)**

31. Plaintiff's claims for injunctive relief are barred because Plaintiff cannot show that she will suffer any irreparable harm from Defendants' actions.

**FIFTEENTH AFFIRMATIVE DEFENSE**

**(Adequacy of Remedy at Law)**

32. The alleged injury or damage suffered by the Plaintiff, if any, would be adequately compensated by damages, if any. Accordingly, Plaintiff has a complete and adequate remedy at law and is not entitled to seek equitable relief.

**SIXTEENTH AFFIRMATIVE DEFENSE**

**(Failure to Mitigate)**

33. The claims made in the Complaint are barred, in whole or in part, because of a failure to

mitigate damages, if such damage exists.

**SEVENTEENTH AFFIRMATIVE DEFENSE**

**(Condition Precedent)**

34. Plaintiff failed to comply with one or more conditions precedent to filing this Complaint.

**EIGHTEENTH AFFIRMATIVE DEFENSE**

**(First Amendment)**

35. The claims made in the Complaint are barred, in whole or in part, by the First Amendment to the Constitution of the United States.

**NINETEENTH AFFIRMATIVE DEFENSE**

**(Duplicative Claims)**

36. Without admitting that the Complaint states a claim, any remedies are limited to the extent that there is sought an overlapping or duplicative recovery pursuant to the various claims for any alleged single wrong.

**TWENTIETH AFFIRMATIVE DEFENSE**

**(Fraud)**

37. The claims made in the Complaint are barred, in whole or in part, by fraud on the Plaintiff.

**TWENTY-FIRST AFFIRMATIVE DEFENSE**

**(Abandonment)**

38. The claims made in the Complaint are barred, in whole or in part, by abandonment of any marks at issue.



**TWENTY-SECOND AFFIRMATIVE DEFENSE**

**(Third-Party Use)**

39. The claims made in the Complaint are barred, in whole or in part, by reason of other parties' use of any marks at issue.

**TWENTY-THIRD AFFIRMATIVE DEFENSE**

**(Action of Others)**

40. The claims made in the Complaint are barred, in whole or in part, because Defendants are not liable for the acts of others over whom they have no control.

**TWENTY-FOURTH AFFIRMATIVE DEFENSE**

**(Standing)**

41. The claims made in the Complaint are barred, in whole or in part, on the basis that Plaintiff lacks standing to assert the claims herein.

42. To the extent applicable, Defendants incorporate all the affirmative defenses raised by all other Defendants in this matter.

**RESERVATION OF RIGHTS**

43. Defendants reserve the right to assert additional defenses based on information learned or obtained during discovery.

WHEREFORE, Defendants pray for judgment as follows:

1. That the court deny Plaintiff's request for injunction;
2. That Plaintiff takes nothing by way of her Complaint;

3. That the Complaint, and each and every purported claim for relief therein be dismissed with prejudice;
4. That Defendants be awarded their costs of suit incurred herein, including attorneys' fees and expenses; and
5. For such other and further relief as the Court deems just and proper.

DATED this 5th day of July, 2023.

**CHOCK BARHOUM LLP**



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Portland Hair Extensions by Penelope

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UNITED STATES DISTRICT COURT

DISTRICT OF OREGON

PORTLAND DIVISION

KIMBERLY SCHOENE, AN OREGON  
RESIDENT,

Case No. 3:23-cv-00693-AN

**CERTIFICATE OF SERVICE**

Plaintiff,

v.

PENELOPE CHRISTENSEN, AN  
OREGON RESIDENT; AND PORTLAND  
HAIR EXTENSIONS BY  
PENELOPE, AN ACTIVE OREGON  
CORPORATION,

Defendants.

I hereby certify that on the 5<sup>th</sup> day of July, 2023, I will electronically file the foregoing with the Clerk of the Court using the CM/ECF system, which will then send a notification of such filing

to all registered individuals. Additionally, I hereby certify that a true copy of the foregoing **DEFENDANTS PENELOPE CHRISTENSEN AND PORTLAND HAIR EXTENSIONS BY PENELOPE'S ANSWER AND AFFIRMATIVE DEFENSES** was served as stated below on:

Kimberly Schoene  
1801 NW Upshur, Suite 100  
Portland OR 97209  
*Pro Se Plaintiff*

- ☐ By hand delivery
- ☐ By first-class mail\*
- ☒ By electronic service through ECF system as identified on the Notice of Electronic Filing (NEF)
- ☐ By facsimile transmission  
Fax #:
- ☒ By e-mail:  
[hissmallvoice@gmail.com](mailto:hissmallvoice@gmail.com)

\*With first-class postage prepaid and deposited in Portland, Oregon.

Dated this 5<sup>th</sup> day of July, 2023.

**CHOCK BARHOUM LLP**



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